

PD**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT****SENTENCE BY A PERSON IN FEDERAL CUSTODY****15****6118**

United States District Court		District	Eastern District Pennsylvania, Allentown Division
Name (under which you were convicted): Michael J. Schlager		Docket or Case No.: 5:10-cr-00753-PD-2	
Place of Confinement: FCI Loretto, P.O. Box 1000, Loretto, PA 15940		Prisoner No.: 66734-066	
UNITED STATES OF AMERICA		Movant (include name under which convicted)	
V.		MICHAEL J. SCHLAGER	

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

United States District Court
Eastern District Pennsylvania
Allentown Division

(b) Criminal docket or case number (if you know): 5:10-cr-00753-PD-2

2. (a) Date of the judgment of conviction (if you know): 9/12/2012

(b) Date of sentencing: 09-12-2012

3. Length of sentence: 240 months imprisonment

4. Nature of crime (all counts):

Count 1 charged Movant with Conspiracy to Commit Mail Fraud, in violation of 18 U.S.C. § 371.
Counts 2-3 charged Movant with Mail Fraud and Aiding and Abetting, in violation of 18 §§ 1341 and 2.
Counts 4-9 charged Movant with Mail Fraud and Aiding and Abetting, in violation of 18 §§ 1341 and 2.

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

N/A

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☒

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐

No ☒

8. Did you appeal from the judgment of conviction?

Yes ☐

No ☒

9. If you did appeal, answer the following:

- (a) Name of court: United States Court of Appeals for the Third Circuit Court of Appeal
- (b) Docket or case number (if you know): No. 12-3799
- (c) Result: Affirmed
- (d) Date of result (if you know): 8/22/2014
- (e) Citation to the case (if you know): USA v. Schlager, (No. 12-3799) (3rd Cir. August 22, 2014)
- (f) Grounds raised:

Is resentencing required, on the record that does not make clear that the district court considered defendant's argument – and the government's argument – that "the defendant is not likely to commit further crimes?"

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐

If "Yes," answer the following:

- (1) Docket or case number (if you know): No. 14-6737
- (2) Result: Denied
- (3) Date of result (if you know): 11/4/2015
- (4) Citation to the case (if you know): Schlager v. United States, (No. 14-6737) (S. Ct. 11-10-14)
- (5) Grounds raised:
- N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: N/A
- (2) Docket or case number (if you know): N/A
- (3) Date of filing (if you know): _____
- (4) Nature of the proceeding: N/A
- (5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐No ☒

(7) Result: N/A

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket of case number (if you know): N/A

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: N/A

(5) Grounds raised:

N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐No ☒

(7) Result: N/A

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

-
12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Ineffective Assistance of Pretrial Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Pretrial counsel's failure to:

1. conduct an adequate and independent pretrial investigation;
2. file any substantive pretrial motions;
3. properly inform Movant of the consequences of pleading guilty as opposed to proceeding to trial including the maximum sentence if he was convicted at trial;
4. properly communicate with Movant including not providing discovery so that he could make an informed decision with regard to pleading guilty or proceeding to trial; and
5. to attempt to negotiate a more favorable Plea Agreement for Schlager deprived Movant of effective assistance of counsel under the Sixth Amendment to the Constitution of the United States in the pretrial and plea context of the proceedings.

A memorandum of law in support of Movant's § 2255 Motion will be forthcoming.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of ineffective assistance of counsel are not generally raised on direct appeal. the proper remedy is a § 2255 Motion.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND TWO: Ineffective Assistance Sentencing Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Sentencing counsel's failure to:

1. review, discuss and explain the Presentence Report ("PSR") with Movant;
2. file any substantive objection to the PSR;
3. properly argue at sentencing for mitigation of Movant's sentence; and
4. object to Movant's sentence being substantially unreasonable deprived him of effective assistance of sentencing counsel under the Sixth Amendment to the Constitution of the United States and a fair and just sentence.

A memorandum of law in support of Movant's § 2255 Motion will be forthcoming.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of ineffective assistance of counsel are generally not raised on direct appeal. The proper remedy is a § 2255 Motion.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND THREE: Ineffective Assistance of Appellate Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Appellate counsel's failure to:

1. communicate with Movant regarding his appeal and the issues to raise on appeal;
2. allow Movant to participate in his appeal; and
3. raise other meritorious issues which were available and stronger than the one issue raised on appeal deprived Movant of effective assistance of appellate counsel under the Sixth Amendment to the Constitution of the United States and a fair and meaningful appellate review.

A memorandum of law in support of Movant's § 2255 Motion will be forthcoming.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of ineffective assistance of counsel are generally not raise on direct appeal. The proper remedy is a § 2255 Motion.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND FOUR: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

N/A

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing:

N/A

(b) At the arraignment and plea:

Joseph U. Metz, 112 Market Street, 8th FLR., Harrisburg, PA 17101.

(c) At the trial:

N/A

(d) At sentencing:

Joseph U. Metz, 112 Market Street, 8th FLR., Harrisburg, PA 17101.

(e) On appeal:

Daniel I. Siegel, 800 King Street, Suite 200, Wilmington, DE 19801.

(f) In any post-conviction proceeding:

N/A

(g) On appeal from any ruling against you in a post-conviction proceeding:

N/A

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

N/A

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

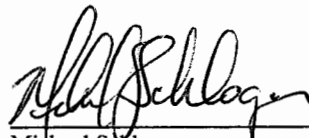
A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, Schlager respectfully requests that the Court grant the following relief:

Vacate his conviction and sentence to start anew; alternatively, grant an Evidentiary Hearing so that he can to further prove his grounds set forth above, resolve facts in dispute, and expand an incomplete record or any other relief to which this Court deems that he may be entitled.

Respectfully submitted,



Michael Schlager
Reg. No. 66734-066
FCI LORETTO
FEDERAL CORR. INSTITUTION
P.O. BOX 1000
LORETTO, PA 15940
Appearing pro se

DECLARATION OF MICHAEL SCHLAGER

I, Michael Schlager, declarant herein, declare and attest to the fact in the above and foregoing Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody to be true and correct to the best of my knowledge under the penalty of perjury pursuant to 28 U.S.C. § 1746. I placed this Motion in the mailbox at FCI Loretto on November 1, 2015, invoking the mailbox rule for filing of this motion.

Dated: November 1, 2015



Michael Schlager

MICHAEL SCHLAGER
Reg. No. 66734-066
FCI LORETTO
FEDERAL CORR. INSTITUTION
P.O. BOX 1000
LORETTO, PA 15940

November 7, 2015

Clerk, U. S. District Court
Eastern District of Pennsylvania
Allentown Division
504 Hamilton Street
Allentown, PA 18101

RE: *Schlager v. United States*
Criminal No. 5:10-cr-00753-PD-2
Civil No. 5:15-cv-

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15-6118

To the Clerk of the Court:

Enclosed please find and accept for timely filing Movant's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody ("§ 2255 Motion"). Kindly submit this § 2255 Motion to the Court. A Memorandum of Law in Support of § 2255 Motion will be forthcoming within 30-days.

Thank you for your assistance in this matter.

Sincerely,



MICHAEL SCHLAGER

Appearing *Pro Se*

Encl. as noted